

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL  
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL  
DEBORAH J. COOPER



ATTORNEYS  
DANIEL J. MULLEN  
JAMES D. CAHILL, III  
RONALD F. RODGERS  
JEFFREY R. HOWARD  
G. DANA BISBEE  
GREGORY W. SWOPE  
PETER T. FOLEY  
STEVEN M. HOURAN  
EVE H. OYER  
LESLIE J. LUDTKE  
ROBERT P. CHENEY, JR.

THE ATTORNEY GENERAL  
STATE HOUSE ANNEX  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL  
JOHN T. PAPPAS  
JAMES E. TOWNSEND  
ANNE R. CLARKE  
MARC R. SCHEER  
DONALD J. PERRAULT  
MARTIN R. JENKINS  
PETER W. MOSSEAU  
BETSY S. WESTGATE  
EDWARD L. CROSS, JR.  
MARTHA V. GORDON  
PETER C. SCOTT  
MICHAEL A. PIGNATELLI  
BRIAN T. TUCKER  
PAUL BARBADORO  
BRUCE E. MOHL  
JOHN A. MALMBERG  
DOUGLAS L. PATCH  
LORETTA S. PLATT

May 26, 1983

Judith V. Bell, Esquire  
Susan Saggiotes, Esquire  
Office of Legislative Affairs  
New Hampshire Division of Welfare  
Hazen Drive  
Concord, NH 03301

Re: Special Educational Requirements Relating to Neglect

Dear Ms. Bell and Ms. Saggiotes:

This is in response to your memorandum of May 10, 1983, in which you have requested advice concerning the meaning of RSA 169-C:3, XIX(b). Specifically, you have inquired whether a parent who fails to cooperate in the formulation of a program for special education under RSA Ch. 185-C, thereby neglects his child within the meaning of RSA 169-C:3, XIX(b). This statute defines a neglected child as a child "who is without ... education as required by law...." It is my opinion that a parent's failure to cooperate under RSA Ch. 186-C does not in and of itself constitute neglect within the meaning of RSA 169-C:3, XIX(b).

RSA Ch. 186-C was enacted for the purpose of providing all children in New Hampshire with equal educational opportunities, including a "free and appropriate public education for all educationally handicapped children." RSA 186-C:1 (Supp.). This chapter generally provides that a program of special education will be available for educationally handicapped children. A part of the program includes an individualized education plan for the education of educationally handicapped children which has been developed by the school district in accordance with the rules adopted by the State Board of



Judith V. Bell, Esquire  
Susan Saggiotes, Esquire  
Page 2  
May 26, 1983

Education. See RSA 186-C:2. The statute specifically provides that:

Each child determined by the local school district as being educationally handicapped in accordance with RSA 186-C:2 and in need of special education or special education related services shall be entitled to attend an approved program which can implement the child's individualized education plan. RSA 186-C:9.

School districts are required to establish approved programs for educationally handicapped children or to enter into cooperative agreements to provide approved programs, or to pay tuition to an approved program maintained by another school district or by a private organization. RSA 186-C:10. Provision is also made for the appointment of surrogate parents to "protect the educational rights of eligible, educationally handicapped children" when the child's parents or guardian is unavailable or unknown. RSA 186-C:14.

It is significant, however, that RSA Ch. 186-C does not require an educationally handicapped child's parent to participate in the development of a program of special education for the child or require the parent to assure that the child participate in a program of special education. The surrogate parent's program also is designed to operate in instances where the parent is "unknown or unavailable" but not in instances where the parent refuses to participate in the program. Although RSA Ch. 186-C establishes an educationally handicapped child's entitlement to participate in a program of special education, it does not contain a correlative requirement for the parent to assure the child's participation in the program. In this respect, RSA Ch. 186-C is significantly different from its predecessor, RSA Ch. 186-A. That statute, which was repealed and superceded in 1981 at the time of the enactment of RSA Ch. 186-C, contained language which required special education for handicapped children as defined in RSA 186-A:2. Specifically, RSA 186-A:6 provided:

Every child determined by the local school district as being handicapped in accordance with standards set by the department of education and in need of special education and education related services shall attend and approved school program. Such child shall receive instruction until such time as the child has acquired education equivalent to a high school education or has attained the age of 21 years.

Judith V. Bell, Esquire  
Susan Saggiotes, Esquire  
Page 3  
May 26, 1983

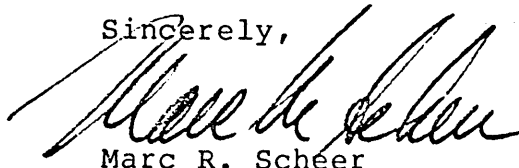
RSA 186-A:6 (1979 Supp.). (Emphasis added).

This language mandating attendance at an approved school or program contrasts with the language of the RSA 186-C:9 (1981 Supp.), which provides only that the child is entitled to such an education, not that the child is required to attend. Accordingly, the educational opportunities allowed under RSA Ch. 186-C are not within the meaning of RSA 169-C:3, XIX(b), which refers to "education as required by law."

The meaning of the phrase "education as required by law" relates directly to the language of RSA Ch. 193, which provides that children between the ages of 6 and 16 are required to attend a public school or an approved private school during all times the schools are in session. RSA 193:1. This chapter also specifically imposes a duty on parents and custodians of children to assure that they attend schools at all times public schools are in session. RSA 193:2. Thus, this statute in effect defines the "education which is required by law" the neglect of which may be enforceable through the provisions of RSA 169-C.

In summary, a parent's failure to cooperate under the provisions of RSA 186-C does not in and of itself constitute neglect within the meaning of RSA 169-C:3, XIX(b). Further inquiry must be made as to whether or not the parent is meeting his obligation under RSA Ch. 193, the absence of which may constitute neglect within the meaning of RSA 169-C:3, XIX(b).

Sincerely,



Marc R. Scheer  
Assistant Attorney General  
Division of Legal Counsel

MRS:ab  
83-64-I